No. 93-1359

Supreme Court, U.S.
FILED
MAR 24 1994
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1993

SESHADRI RAJU, M.D.

Petitioner,

v.

ROBERT S. RHODES, M.D.

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING BELOW

The Parties To The Proceeding Below are correctly set forth in the Petition.

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BRIEF IN OPPOSITION

OPINIONS BELOW, JURISDICTION, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The opinions below, jurisdiction and statutory and regulatory provisions involved are correctly set forth in the Petition.

STATEMENT OF THE CASE

The facts necessary for a clear understanding of the question presented are adequately set forth in the Opinions of the district court and Fifth Circuit below. App. 1-52.[1]

ARGUMENT

REASONS FOR NOT GRANTING THE WRIT

The Petition requests the court to grant certiorari to review whether the lower courts ignored *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461 (1982), in deciding that prior quasi-judicial administrative determinations of fact precluded relitigation of Petitioner's state law claims. Whether the elements of collateral estoppel under Mississippi law have been met is not at issue. The federal law governing preclusion in federal courts has long been established and was correctly applied below. This Court should not grant certiorari to review these settled legal principles.

1.

THE MISSISSIPPI STATE COURT JUDGMENT REVIEWING THE UNDERLYING ADMINISTRATIVE PROCEEDINGS IS BINDING ON THE FEDERAL COURT UNDER *KREMER*

Dr. Raju seeks review of the decision of the lower courts that the *administrative* adjudication was preclusive.

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[1] Citations to the Appendix to the Petition will be cited at "App. ___." The Petition will be cited as "Pet. ___."

However, the *judicial* adjudication of the Mississippi circuit court to which Dr. Raju appealed the decision of the Faculty Grievance Committee is itself issue preclusive. "It is well established that judicial affirmance of an administrative determination is entitled to preclusive effect. . . . There is no requirement that judicial review proceed *de novo* if it is to be preclusive." *Kremer,* 456 U.S. at 480 n. 21 (cited at App. 24). The Petition does not argue that this judicial proceeding did not comply with due process. Thus, regardless of the level of administrative process provided, his claims against Dr. Rhodes are precluded by the decision of the state court. This being the case, this court should not grant certiorari to review whether the administrative decision was preclusive.

2.

THE LOWER COURTS SPECIFICALLY APPLIED *KREMER* TO THE PRIOR ADMINISTRATIVE AND JUDICIAL DECISIONS

The sole question presented in the Petition is whether a district court may ignore the due process analysis required by *Kremer* before applying the doctrine of collateral estoppel to bar a plaintiff's state law tort claims. The question presented by Dr. Raju incorrectly presumes that the courts below disregarded this due process analysis. To the contrary, both the district court and the circuit court of appeals expressly applied the *Kremer* due process analysis and held that, as a matter of law, Dr. Raju was afforded a full and fair opportunity to litigate. App. 12, 24.

The district court specifically addressed *Kremer* and found that Dr. Raju was provided an administrative hearing before a faculty grievance committee (complete with the opportunity to present witnesses, and other evidence and to respond to adverse witnesses), an administrative appeal to the Mississippi Board of Trustees of Institutions of Higher Learning, and an appeal to the county circuit court. App. 24-25. The Fifth Circuit likewise addressed *Kremer* and found that Dr. Raju was "accorded incredibly complete administrative and judicial review and at all levels has failed." App. 13.

Since both courts below clearly applied and followed *Kremer*, this is not an appropriate case to determine whether a district court may disregard *Kremer*.

3.

RESPONDENT HAS BEEN FINALLY DETERMINED TO BE IMMUNE TO PETITIONER'S CLAIMS

In addition to holding that Dr. Raju's claims were collaterally estopped, both the district court and the Fifth Circuit held that Dr. Raju failed to present a genuine issue of material fact with regard to Dr. Rhodes' state law qualified immunity defense. App. 14, 51 n. 24. Whether this finding was proper is not a question raised in the Petition. Thus, summary judgment in favor of Dr. Rhodes was proper even if the courts below erroneously applied the doctrine of collateral estoppel. As a result, even if this Court were to grant certiorari and find that the lower court ignored *Kremer*, this Court would be compelled to

affirm the summary judgment based upon the lower courts' finding that he was entitled to qualified immunity.

4.

PETITIONER'S DUE PROCESS CLAIM WAS FULLY ADJUDICATED, NOT APPEALED, AND JUDGMENT IS FINAL

Both courts below held as a matter of law that Dr. Raju was afforded procedural due process. App. 13, 36 n. 16. Because Dr. Raju did not appeal his federal law due process claims, Pet. 7, this finding is unchallenged. As a result, the issue of whether Dr. Raju was provided procedural due process at the administrative level has been finally determined. Since *Kremer* requires only that the prior adjudication "satisfy the minimum procedural requirements of the Fourteenth Amendment's Due Process Clause," *Kremer*, 456 U.S. at 481, whether the lower court adhered to *Kremer* has been finally determined. Nothing is left for Dr. Raju to appeal.

5.

NO CONFLICT EXISTS WITH ANY DECISION OF THIS COURT OR AMONG THE CIRCUITS

No conflicts exists with any decision of this Court or among the circuits. In fact, this case is "on all fours" with *Kremer*: (1) Kremer was allowed an administrative presentation; Raju had a plenary hearing before the Faculty Grievance Committee. (2) Both Kremer and Raju had the right to present witnesses. (3) Both Kremer and Raju were allowed to submit documentary evidence. (4) Like Kremer, Raju was allowed to present oral and written

rebuttal. (5) Like Kremer, Raju was afforded administrative and judicial appellate review procedures. *Kremer*, at 281. The procedures afforded Dr. Raju clearly satisfied the *Kremer* due process requirements. The state law collateral estoppel elements were satisfied. App. 11, 26-27. Consequently, preclusion was mandatory.

The case of *Scroggins v. State of Kansas*, 802 F.2d 1289 (10th Cir. 1986), cited by Dr. Raju, is inapposite. In *Scroggins*, the appellant contended that issues raised in the second proceeding were not actually litigated or necessarily determined – two of the traditional elements of collateral estoppel. *Scroggins*, 802 F.2d at 1291. In this instance, Dr. Raju does not challenge the findings of the district court and Fifth Circuit that all four elements of collateral estoppel under Mississippi law were met. App. 11, 26-27. Since whether the issues raised were actually litigated or necessarily determined is not at issue, *Scroggins* is inapplicable.

CONCLUSION

The Fifth Circuit, the district court and the state circuit court all determined Dr. Raju was provided procedural due process throughout the administrative proceedings. This is all that *Kremer* requires. The final judgment of the state court, to which no question is presented in the Petition, is itself preclusive. Further, both the district court and the Fifth Circuit found Dr. Rhodes immune from liability based upon the undisputed facts. This finding has not been challenged and would

require affirmance irrespective of the question presented in the Petition. Clearly, certiorari is inappropriate.

Respondent respectfully requests the Court to deny the Petition for Certiorari.

Respectfully submitted,

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